

1 KAMALA D. HARRIS
Attorney General of California
2 KAREN B. CHAPPELLE
Supervising Deputy Attorney General
3 GEOFFREY WARD
Deputy Attorney General
4 State Bar No. 246437
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2660
6 Facsimile: (213) 897-2804
E-mail: Geoffrey.Ward@doj.ca.gov
7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **STATE BOARD OF OPTOMETRY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. CC-2009-146

13 **ROBERT DAVERN ARMSTRONG**

14 **5601 De Soto Avenue**
Woodland Hills, CA 91365

A C C U S A T I O N

15 **Optometry Certificate of Registration No.**
4890

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

- 20 1. Mona Maggio ("Complainant") brings this Accusation solely in her official capacity
21 as the Executive Officer of the State Board of Optometry, Department of Consumer Affairs.
22 2. On or about September 14, 1967, the State Board of Optometry issued Optometry
23 Certificate of Registration Number 4890 to Robert Davern Armstrong (Respondent). The
24 Optometry Certificate of Registration was in full force and effect at all times relevant to the
25 charges brought herein and will expire on October 31, 2011, unless renewed.

26 ///

27 ///

28 ///

JURISDICTION

3. This Accusation is brought before the State Board of Optometry ("Board"), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 3024 of the Code provides authority for the Board to revoke or suspend an optometrist's certificate of registration:

"The board may grant or refuse to grant certificates of registration as provided in this chapter and may revoke or suspend the certificate of registration of any optometrist for any of the causes specified in this chapter. It shall have the power to administer oaths and to take testimony in the exercise of these functions."

5. Section 3090 of the Code also provides authority for the Board to take disciplinary action:

"Except as otherwise provided by law, the board may take action against all persons guilty of violating this chapter or any of the regulations adopted by the board. The board shall enforce and administer this article as to licenseholders, and the board shall have all the powers granted in this chapter for these purposes, including, but not limited to, investigating complaints from the public, other licensees, health care facilities, other licensing agencies, or any other source suggesting that an optometrist may be guilty of violating this chapter or any of the regulations adopted by the board."

STATUTES

6. Section 3110 of the Code in relevant part provides grounds for discipline:

"The board may take action against any licensee who is charged with unprofessional conduct, and may deny an application for a license if the applicant has committed unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

(a) Violating or attempting to violate, directly or indirectly assisting in or abetting the violation of, or conspiring to violate any provision of this chapter or any of the rules and regulations adopted by the board pursuant to this chapter.

(b) Gross negligence.

....

(y) Failure to refer a patient to an appropriate physician in either of the following circumstances:

(1) Where an examination of the eyes indicates a substantial likelihood of any pathology that requires the attention of that physician.

(2) As required by subdivision (c) of Section 3041."

1 7. Section 3041.1 of the Code provides that optometrists' standard of care for certain
2 diagnostic and treatment practices is the same as for other medical professionals: "[w]ith respect
3 to the practices set forth in subdivisions (b), (d), and (e) of Section 3041, optometrists diagnosing
4 or treating eye disease shall be held to the same standard of care to which physicians and
5 surgeons and osteopathic physicians and surgeons are held."

6 8. Section 3041 subdivision (d) of the Code provides:

7 “(d) In any case where this chapter requires that an optometrist consult
8 with an ophthalmologist, the optometrist shall maintain a written record in the
9 patient's file of the information provided to the ophthalmologist, the ophthalmologist's
10 response, and any other relevant information. Upon the consulting ophthalmologist's
11 request and with the patient's consent, the optometrist shall furnish a copy of the
12 record to the ophthalmologist.”

13 9. Gross negligence is defined as “a lack of even scant care or an extreme departure
14 from the ordinary standard of conduct.” *See, e.g. Kearl v. Board of Medical Quality Assurance*
15 (1986) 189 Cal.App.3d 1040, 1052 (physician's license suspended for gross negligence and
16 incompetence).

17 **COST RECOVERY**

18 10. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
19 administrative law judge to direct a licensee found to have committed a violation or violations of
20 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
21 enforcement of the case.

22 **FIRST CAUSE FOR DISCIPLINE**

23 **(Gross Negligence)**

24 11. Respondent is subject to disciplinary action under section 3110 subdivision (b) of the
25 Code because he failed to provide even scant care or engaged in an extreme departure from the
26 ordinary standard of care by failing to properly examine, diagnose, and recommend treatment for
27 a patient with symptoms of a detached retina. The circumstances are as follows:

28 ///

 ///

 ///

12. On or about June 20, 2008, patient W. P.¹ visited Respondent at the optometry department at Kaiser Permanente Woodland Hills. The patient had symptoms of a detached retina in his left eye. Respondent misdiagnosed the potentially detached retina, believing it to be a cataract. He referred the patient to an ophthalmologist, who the patient was scheduled to see on July 3, 2008, almost two weeks later.

13. After visiting Respondent, the patient's vision in his left eye rapidly deteriorated. The patient went for a second opinion on June 30, 2008. At that appointment, an ophthalmologist diagnosed the patient as having a detached retina in the left eye, and scheduled immediate surgery. After multiple surgeries, the patient's vision remained permanently reduced in that eye.

14. Respondent's failure to properly diagnose, examine, and recommend treatment for patient W. P. was gross negligence under section 3110 of the Code, because he failed to provide scant care to the patient and his conduct was an extreme departure from the ordinary standard of care that an optometrist would have provided.

SECOND CAUSE FOR DISCIPLINE

(Failing to Refer Patient to a Physician)

15. By committing the acts set forth in paragraphs 11-14, above, Respondent is subject to discipline under Section 3110 subdivision (y) of the Code because he failed to immediately refer patient W. P. to a physician when an examination of W. P.'s left eye should have indicated a substantial likelihood of a detached retina, a pathology requiring the immediate attention of a physician.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the State Board of Optometry issue a decision:

1. Revoking, suspending Optometry Certificate of Registration Number 4890, issued to Robert Davern Armstrong;

¹ The patient's name will be abbreviated in this accusation to preserve patient privacy.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

2. Ordering Robert Davern Armstrong to pay the State Board of Optometry the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and

3. Taking such other and further action as deemed necessary and proper.

DATED: January 31, 2011


MONA MAGGIO
Executive Officer
State Board of Optometry
Department of Consumer Affairs
State of California
Complainant

LA2010601039
60595220_2.docx